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REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Letter dated 1 December 1992 from the Permanent Representative of Uruguay to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a document containing guidelines for the drafting of an international environmental code which Uruguay is submitting as its contribution to the development of international environmental law and to the strengthening of the principles of the Rio Declaration, adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro.

I should be grateful if you would have this letter and its annex distributed as an official document of the General Assembly under agenda item 79.

(Signed) Ramiro PIRIZ-BALLON
Ambassador
Permanent Representative of Uruguay
to the United Nations

ANNEX

Guidelines for a draft international environmental code

Preamble

The States signatories to this instrument,

CONCERNED for the life, health and quality of life of human kind,

NOTING the harmful and probably irreparable consequences of progressive environmental degradation for the preservation of these values,

CONSIDERING that the enjoyment of a healthy, balanced environment is a fundamental human right and the vital basis for all other rights,

RECOGNIZING the overall unity of the biosphere, a unique and indivisible ecosystem, and the consequent interdependence of all its component elements,

ACCEPTING that all subjects of law have an essential obligation to respect and preserve the environment, including the right to exist of all the living creatures which harmoniously make up the global ecological system,

RECOGNIZING intergenerational responsibility, solidarity and cooperation among the nations and peoples of the Earth as the only means of confronting environmental problems and as a prerequisite for survival,

BELIEVING that, accordingly, the foundations must be laid for individuals and States to behave ethically and ecologically towards the environment and that this must be done through the universal adoption of an international environmental code establishing the principles and norms which constitute such foundations,

HEREBY ADOPT the following guidelines, on which the above-mentioned code will have to be modeled:

CHAPTER I

Principles

1. The enjoyment of a healthy, balanced environment ensuring decent, adequate living conditions is a fundamental human right.

2. The biosphere is a unique and indivisible ecosystem, so that all its component elements are interdependent and its preservation is a common obligation of humankind.

3. All individuals, and all the political and legal organizations representing them, have an essential obligation to respect and preserve the environment, including the right to exist of all the living species which harmoniously make up the global ecosystem, without prejudice to their natural role in the food chain.

4. Present generations are responsible for the environment they will leave to future generations; this fact gives rise to the principles of intergenerational responsibility, solidarity and cooperation among all the nations and peoples of the Earth.

5. No State has the right to use, or to permit the use of, its territory in such a way as might cause damage by environmental pollution to the territory of another State or to persons or property within the jurisdiction of that State, or might harm the environment of areas beyond any national jurisdiction.

6. Each State has the duty to ensure that activities carried on within the limits of its jurisdiction, in accordance with a sound, appropriate environmental policy, are in conformity with the preceding article.

CHAPTER II

Definitions

(A definitions chapter will be inserted here, requiring that subsequent articles be renumbered.)

CHAPTER III

Rights and obligations of States

7. States have an obligation to preserve and protect the environment because of its intrinsic value, because it supports life and, therefore, because it is the basis of all society and of the law inherent therein.

8. States undertake to draft, negotiate and implement global norms and to use all means afforded them by international law to harmonize and coordinate the environmental standards in force in each case, in accordance with the latest scientific findings.

9. States undertake to adopt environmental policies in accordance with internationally established guidelines and to cooperate among themselves to the full extent of their material and financial possibilities.

10. States and their inhabitants have a right to use the natural resources situated within their territories rationally and without impairing ecosystems, in keeping with the goal of preservation of the global environment enunciated in this instrument and without prejudice to the development needs and objectives of each country.

11. States shall adjust their environmental policies to internationally accepted norms and, in particular, shall use all available means to prevent environmental damage by adopting appropriate sectoral policies that guarantee a healthy environment and sustainable development.

CHAPTER IV

International environmental cooperation

12. States shall standardize, coordinate and harmonize methods of establishing and measuring the environmental parameters, rules, statistics and directives to be used in environmental studies and research, and shall use common research and quantification techniques wherever possible.

13. States shall cooperate in preventing, controlling, reducing and eliminating pollution and the various forms of environmental degradation anywhere in the biosphere.

14. States shall exchange, as widely as possible, information on any technologies which, directly or indirectly, have a positive environmental impact and shall seek to increase the protection, conservation and enhancement of the environment.

15. States shall promote scientific research on environmental preservation as widely and in as great depth as possible and shall exchange the corresponding information, especially information on methods and results.

16. States undertake to render all possible assistance and cooperation in environmental emergencies in order to minimize the resulting damage and losses.

17. States also undertake to establish a system of norms and mechanisms designed to prevent environmental accidents and disasters and mitigate their effects, in accordance with the guidelines adopted by the Office of the United Nations Disaster Relief Coordinator.

CHAPTER V

Trade and natural resources

18. National and international trade activities shall be regulated in such a way that they do not cause environmental degradation or damage.

19. Trade in commodities shall be regulated in such a way that it does not jeopardize the sustainable use of renewable natural resources and the maximum conservation of non-renewable resources. Such regulation shall be neither protectionist nor discriminatory, nor shall it be a barrier to free trade.

CHAPTER VI

Environment and development

21. States undertake to incorporate from the outset in all development plans and projects assessments of the environmental impact at all levels and stages of execution, and to take the findings of those assessments into account in implementing such plans and projects.

22. The planet's material resources are the common vital basis of the human race and of life in general. Accordingly, States shall exploit the resources situated in their respective territories in accordance with the norms established by the international community, ensuring minimum environmental impact and optimum use of resources.

23. States undertake to ensure that their domestic legislation establishes norms no less strict or stringent than those applicable at the international level and to take into account, as a matter of priority, the right of indigenous peoples to natural resources.

24. In the context of sustainable human development, international free trade shall be guaranteed and shall be carried on in accordance with established norms, in order to ensure equitable access to and trade in natural resources for all peoples, guaranteeing fair prices for all products, whether commodities or manufactures.

CHAPTER VII

Provisions governing specific environmental sectors and natural resources

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Land use and soil conservation

25. States declare the conservation of agricultural land to be a top priority. Accordingly, as a general rule, all ecosystems will have to be used according to their natural productive role, States being required to keep an up-to-date inventory and classification of their lands, in accordance with guidelines established by international agencies to be designated by the international community.

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Preservation of biological diversity

26. States recognize the principle of the universality of the right to enjoy the genetic resources of the planet and undertake to do their utmost to ensure the conservation of such resources and their maximum natural biodiversity, guaranteeing the preservation of their diversity and their equitable use by the peoples where they are to be found, in the common interest of all humankind.

27. To that end, States shall afford maximum protection to the fauna and flora of the Earth and shall take appropriate steps to preserve species and their habitats.

28. The necessary creation of protected areas such as sanctuaries, reserves, national parks, etc., with their corresponding safeguard and other zones, shall not preclude the rational use of all ecosystems in keeping with their natural role and with the norms of sustainable development established above.

29. No species shall be exploited in such a way as to put it at risk of extinction. The use of wild or domestic animals, especially for experimental or scientific purposes, shall be regulated by a special code.

-C-

Plant cover

30. The conservation and protection of the Earth's plant cover are declared an absolute priority for humankind. All practices that destroy such cover are therefore prohibited.

31. Forests shall be exploited in a manner that is consistent with the concept of sustainability and does not impair their ecological functions.

32. States undertake to make every effort to safeguard the planet's remaining forests, in order to prevent any kind of over-exploitation of this vital resource and within the framework of the non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests.

-D-

Coasts, coastal areas and fishing

33. States undertake to protect their coasts and to make every effort to ensure sound technical and administrative management of their coastal areas as a single ecosystem with a specific interface, protecting their shores and avoiding the construction of coastal roads or other kinds of civil engineering

works where these are not strictly necessary for healthy purposes or for other purposes with high social priority.

34. Fishing in all waters, whether the ocean, sea or inland waters of each State, shall be protected in such a way as to ensure conservation of this resource and ecological balance. Special protection shall be provided for fish spawning areas and coastal wetlands and mangrove swamps.

35. Over-fishing, trawl fishing in coastal waters and the use of methods or tackle for massive or indiscriminate fishing, for instance, the use of poisons or explosives of any kind, must absolutely be avoided.

36. States undertake strictly to enforce closed seasons and shall prohibit all commercial fishing or fishing for sport in spawning areas, as well as fishing for certain species whose populations are in decline, when such fishing would threaten their survival, or fishing for individual fish according to their size, all of which shall be regulated by a special convention.

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Seas and hydrographic basins

37. States undertake to do their utmost to protect seas and oceans from any kind of pollution, especially pollution by radioactive wastes.

38. All dumping of toxic or radioactive substances in seas or oceans is expressly prohibited. Violation of this rule shall constitute a crime.

39. The dumping of any kind of waste is prohibited, unless such waste has been treated to render it safe for the marine life of seas and oceans. States undertake to treat the waste water from any city or manufacturing centre, in order to ensure that its level of purity when it enters the final receiving body of water is ecologically acceptable. This policy shall be applied in all sectors capable of causing land-based pollution of the seas.

40. Any deliberate discharge of oil or other products harmful to the marine environment may come to be considered a criminal act.

41. The principles laid down for seas and oceans also apply to any kind of inland waters, whether running, such as those belonging to hydrographic basins, or still, such as lakes and pools in general.

42. Where hydrographic basins are divided politically among two or more States, multinational management bodies shall be created, with the participation of all the joint owners, to administer the basin, under the authority of the States concerned.

-F-

Wetlands and fresh waters

43. States undertake to preserve their coastal wetlands or swamplands and, unless circumstances dictate otherwise, all wetlands and swamplands within their national territory, which may be drained or modified only if they have been proved to seriously endanger the health of the population.

44. States undertake to protect inland fresh waters from any kind of pollution and to avoid the misuse of such waters, which must be utilized and managed rationally as one of the planet's most vital scarce resources.

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Atmosphere

45. States undertake to avoid atmospheric pollution wherever possible by reducing to a minimum the emission of any kind of harmful gases.

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Energy

46. States shall promote the establishment of an agency for energy efficiency and renewable sources of energy, which shall be responsible for developing renewable sources of energy and clean, efficient technologies, in order to reduce the environmental impact to a minimum and develop the economy and the energy independence of all countries.

47. States undertake to conduct scientific and technological research to the fullest extent possible, in order to ensure absolute safety in the handling of nuclear energy before promoting its peaceful use.

48. Geographical areas of exceptional ecological, biological or aesthetic value, structural rarity or vulnerability to human activity shall be subject to special regimes, which may go so far as prohibiting in such areas any economic or other activity which may affect them, as well as restricting access to them without express, justified authorization.

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Waste

49. States shall establish waste-management mechanisms in order to minimize the need for waste disposal. Waste shall be treated at source and managed in an environmentally sound manner.

50. The export of toxic and radioactive wastes shall be strictly regulated and the receiving State must in all cases be informed and have the proper means both for its treatment and recycling and for its environmentally safe storage.

51. States shall ensure by appropriate means that waste produced as a result of any activity, economic or otherwise, is recycled to the maximum extent technologically possible before its final disposal, which should take place after ensuring that the end-product is biodegradable.

-J-

Climate

52. States shall protect the climate system for the benefit of present and future generations, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capacities. States which are developed countries shall therefore take the initiative in combating climate change and its adverse effects.

53. States shall take precautionary measures to anticipate, prevent or reduce the causes of climate change and to mitigate its adverse effects.

CHAPTER VIII

Transboundary pollution

54. Every State has the duty to ensure that activities carried on within the limits of its jurisdiction, in accordance with an appropriate, sound environmental policy and with the provisions of this instrument, will not cause pollution or environmental degradation.

55. As part of their obligation to preserve the global biospheric ecosystem, States shall neither use nor permit the use of their territories in such a way as might cause damage, through pollution or any other kind of environmental degradation, to the territory of another State or to persons in that State.

56. States shall cooperate in preventing, controlling, reducing and eliminating pollution or any other kind of environmental degradation by adopting appropriate rules and directives, and shall take any other action that may be necessary to that end, on the basis of equality, reciprocity and the common good.

57. Before granting any authorization to conduct activities that may have a significant impact on the environment, such as the construction of civil engineering works and factories or power plants, States shall require exhaustive environmental impact assessments to be made with the participation of representatives of the national or transboundary populations who might be affected by such activities.

58. In the case of shared resources, States undertake to establish management systems compatible with the basic unity of the ecosystem in question and with the rights of the joint owners, ensuring that the resources are used, according to their nature, in the manner which is best and most equitable from both the environmental and the economic standpoints.

59. Reparation for damage caused by transboundary pollution shall be made by the State in whose territory the incident which caused the damage occurred, but shall not preclude the possible liability of the individuals or legal entities directly responsible for the damage, or any liability that may be incurred inside the State's borders.

60. The liability of States for transboundary pollution and damage shall be assigned absolutely and objectively, and actual fault shall not be a requirement.

CHAPTER IX

Public disclosure

61. States undertake to report annually on the environmental policy they have applied and on their compliance with the obligations established in this instrument and in specialized conventions on the matter, and to permit investigation and monitoring of the environmental situation in their territories by competent international agencies.

62. States shall make the broadest and fullest possible disclosure of the environmental situation and any changes therein, both to their own population and to other States and the international community as a whole, and each State shall facilitate the participation of non-governmental environmental organizations in all stages of the environmental policy process and the technological process.

CHAPTER X

Education, research and technology transfer

63. States shall do their utmost to promote curricular and extracurricular environmental education and shall establish environmental education programmes at all levels: primary, secondary, higher, vocational and crafts and trades education and teacher training.

64. There shall be the closest possible international cooperation on environmental education and training.

65. The highest priority shall be given to the conduct of scientific and technological research based on a strategy of clean production and sustainable development, making maximum use wherever possible of the traditional

technologies of indigenous peoples and the empirical knowledge amassed locally by all the peoples of the Earth.

66. Scientific and technological research shall focus on the search for technologies which do not cause environmental degradation and have no adverse ecological, social or economic side-effects, avoiding, inter alia, over-consumption of energy, water or other renewable or non-renewable resources. Preference shall be given, especially in developing countries, to the development of technologies which, in keeping with rational criteria, are more labour-intensive.

67. The transfer of non-polluting, environmentally safe technologies shall be encouraged, but the acceptance of any new technology should be conditional on the viability of the ecosystems in question and the technology should benefit the communities in which it is to be used.

CHAPTER XI

Civil and criminal liability

68. Any violation of the norms established in this instrument shall give rise to the administrative liability, civil or criminal as the case may be, of its material authors, from whom the State in whose territory the illicit act took place may demand repayment if it has had to assume responsibility for any related compensation or reparations.

69. Crimes, delicts and violations shall be expressly characterized as such, in writing and in advance, in accordance with generally accepted legal principles.

70. Criminal illicit acts shall be prosecuted ex officio and shall involve wilful and culpable conduct, action and omission and harm and risk; in some particularly serious cases, the penalty imposed on those responsible shall expressly be deprivation of liberty.

CHAPTER XII

Settlement of disputes

71. International environmental courts shall be established at the regional and world levels, with jurisdiction to settle disputes in both patrimonial and criminal matters involving States and private individuals and legal entities and arising from acts or measures which cause or may cause environmental damage.

72. Without prejudice to the provisions of the preceding paragraph, private persons, whether individuals or legal entities, may have recourse to the ordinary courts of any State in order to bring proceedings in respect of

public or private measures or acts which cause or may cause environmental damage.

73. States may establish voluntary arbitration mechanisms for the settlement of disputes to act on both private claims and claims involving States.

74. The international civil liability which may be assigned to a State shall be determined in accordance with international law and its purpose shall be to restore the situation to what it was prior to the occurrence of the harmful event. If this is not possible, fair compensation shall be established, without prejudice to any penal effects which may apply.

75. Judgements handed down by regional international courts shall be appealable before the world environmental court, whose judgement shall be res judicata, and they may be enforced by any means authorized by international law.

76. The domestic legislation of States shall establish mechanisms whereby private persons of any nationality, whether individuals or legal entities, may have recourse to the ordinary courts in order to bring proceedings in respect of public or private measures or acts which may cause environmental damage.

77. Such proceedings brought by private persons may be heard, as the petitioner chooses, by the courts of the State where the harmful act occurred or the State where the damage which is the subject of the proceedings occurred, and the lex loci of the proceedings shall apply.

78. States shall settle their disputes by peaceful means and may, to that end, agree to establish, inter alia, arbitration mechanisms. They shall take the necessary steps to set up the regional international courts and the world court referred to above, before which environmental disputes shall be settled without appeal.

79. The international civil liability which may be assigned to a State shall be determined in accordance with international law and its purpose shall be to restore the environment of States, or States themselves and any individuals or legal entity which have suffered damage, to the condition in which it would have been if the harmful event had not occurred. If this is not possible, fair compensation shall be paid.

80. Institutional arrangements for the application of this code shall be determined by the contracting States.